

LATHAM & WATKINS LLP
NICHOLAS J. BOYLE*
Nicholas.boyle@lw.com
555 Eleventh Street, NW
Washington, D.C. 20004
Tel: 202.637.2200
Fax: 202.637.2201

**REDACTED VERSION OF
DOCUMENT PROPOSED TO
BE FILED UNDER SEAL**

MATTHEW W. WALCH*
matthew.walch@lw.com
330 North Wabash Avenue
Chicago, IL 60611
Tel: 1.312.876.7603
Fax: 312.993.9767
**Pro Hac Vice*

JOSEPH D. AXELRAD (SBN 274580)
joseph.axelrad@lw.com
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071
Tel: 213.485.1234
Fax: 213.891.8763

Attorneys for CoStar Group, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA WESTERN DIVISION**

MOVE, INC., a Delaware
corporation; MOVE SALES, INC., a
Delaware corporation;
REALSELECT, INC., a Delaware
corporation,

Plaintiff,

vs.

COSTAR GROUP, INC., a Delaware
corporation; JAMES KAMINSKY an
individual; and DOES 1 through 10,
inclusive

Defendants.

CASE NO. 2:24-cv-05607-GW-BFMx.

**COSTAR GROUP, INC.'S
OPPOSITION TO MOTION FOR
PRELIMINARY INJUNCTION**

Judge: George H. Wu

Date: September 23, 2024

Time: 8:30 a.m.

Courtroom: 9D

TABLE OF CONTENTS

INTRODUCTION	1
BACKGROUND	4
A. Move and CoStar	4
B. Move Terminated Kaminsky	4
C. Kaminsky Applied for a Job at CoStar	5
D. Kaminsky’s Role at CoStar is Unrelated to his Work at Move	7
E. Kaminsky did not use Move’s Information at CoStar	7
F. Move Did Not Take Prompt Action	9
G. CoStar’s Remedial Actions.....	10
LEGAL STANDARD	10
ARGUMENT.....	11
A. Move is Unlikely to Succeed on the Merits.....	11
1. Move Cannot Establish Trade Secret Misappropriation.....	11
2. Move is Unlikely to Succeed on its CFAA Claim	17
B. Move Faces No Imminent or Irreparable Harm	17
1. Move’s Allegations of Harm are Speculative	17
2. CoStar’s Actions Negated Any Potential for Harm	19
3. Move’s Delay Undermines Immediate Harm	20
4. Move’s Alleged Economic Losses are Reparable	20
C. The Balance of Hardships Weighs Against the Grant of Move’s Motion, which is not in the Public Interest.....	20
CONCLUSION.....	21

TABLE OF AUTHORITIES

Page(s)

CASES

<i>AEG Holdco LLC v. Vazquez</i> , 2021 WL 4859975 (C.D. Cal. Sept. 22, 2021).....	21
<i>Agency Sols. Com, LLC v. TriZetto Grp.</i> , 819 F. Supp. 2d 1001 (E.D. Cal. 2011).....	11
<i>Alert Enter., Inc. v. Rana</i> , 2023 WL 2541353 (N.D. Cal. 2023).....	16
<i>Alliance for the Wild Rockies v. Pena</i> 865 F.3d 1211 (9th Cir. 2017).....	10
<i>AssuredPartners of Oregon, LLC v. Reese</i> , 2022 WL 2188191 (D. Oregon 2022)	15
<i>Beluca Ventures LLC v. Einride Aktiebolag</i> , 660 F. Supp. 3d 898 (N.D. Cal. 2003).....	12
<i>Calence, LLC v. Dimension Data Holdings, PLC</i> , 222 F. App'x 563 (9th Cir. 2007).....	19, 20
<i>Chartwell Staffing Servs v. Atlantic Solutions Grp.</i> , 2019 WL 2177262 (C.D. Cal. May 20, 2019).....	12
<i>Cisco Systems, Inc. v. Chung</i> , 462 F. Supp. 3d 1024 (N.D. Cal. 2020)	16
<i>Concord Music Group, Inc. v. STAX PTY.</i> , 2023 WL 2977495 (C.D. Cal. 2023).....	11
<i>Dotster, Inc. v. ICANN</i> , 296 F. Supp. 2d 1159 (C.D. Cal. 2003).....	18
<i>Edwards Lifesciences Corp. v. Launey</i> , 2023 WL 4680774 (C.D. Cal. June 12, 2023).....	19
<i>Galderma Labs., L.P. v. Revance Therapeutics, Inc.</i> , 2024 WL 3008860 (C.D. Cal. 2024).....	16, 17

1	<i>Garcia v. Google, Inc.</i> ,	
2	786 F.3d 733 (9th Cir. 2015).....	11
3	<i>Gemisys Corp. v. Phoenix Am., Inc.</i> ,	
4	186 F.R.D. 551 (N.D. Cal.1999)	14
5	<i>Genasys Inc. v. Vector Acoustics</i> ,	
6	2022 WL 16577872 (S.D. Cal. Nov. 1, 2022)	12
7	<i>GTAT Corp. v. Fero</i> ,	
8	2017 WL 2303973 (D. Mont. May 25, 2017)	21
9	<i>Harvest Small Bus. Fin. V. Mitnick</i> ,	
10	2024 WL 694372 (C.D. Cal. Jan. 23, 2024).....	14
11	<i>Henry Schein, Inc. v. Cook</i> ,	
12	191 F. Supp. 3d 1072 (N.D. Cal. 2016)	19
13	<i>Herb Reed Enterprises, LLC v. Florida Entertainment Management</i> ,	
14	<i>Inc.</i> ,	
15	736 F.3d 1239 (9th Cir. 2013).....	18
16	<i>hiQ Labs, Inc. v. LinkedIn Corp.</i> ,	
17	31 F.4th 1180 (9th Cir. 2022).....	17
18	<i>In re Ingle Co.</i> ,	
19	116 F.3d 1485 (9th Cir. 1997).....	14
20	<i>In re Providian Credit Card Cases</i> ,	
21	96 Cal. App. 4th 292 (2002).....	14
22	<i>KCG Americas LLC v. Zhengquan Zhang</i> ,	
23	2017 WL 8294011 (N.D. Cal. Apr. 10, 2017)	17
24	<i>Kimbell v. Republic of Austria</i> ,	
25	2017 WL 10573983 (C.D. Cal. July 7, 2017)	20
26	<i>Lam Res. Corp. v. Deshmukh</i> ,	
27	157 F. App'x 26 (9th Cir. 2005).....	18
28	<i>Language Line Servs., Inc. v. Language Servs. Associates, Inc.</i> ,	
	944 F. Supp. 2d 775 (N.D. Cal. 2013).....	16
	<i>Lydo Enters. v. City of Las Vegas</i> ,	
	745 F.2d 1211 (9th Cir.1984).....	20

1	<i>Mattel v. MGA Enter., Inc.</i> ,	
2	782 F. Supp. 2d 911 (C.D. Cal. 2011).....	14
3	<i>Monster Energy Co. v. Integrated Supply Network, LLC</i> ,	
4	2021 WL 2986355 (C.D. Cal. Mar. 10, 2021)	19, 20
5	<i>Nat’l Steel Car, Ltd. v. Canadian Pac. R.R., Ltd.</i> ,	
6	357 F.3d 1319 (Fed. Cir. 2004)	10
7	<i>Oakland Tribune, Inc. v. Chronicle Pub. Co.</i> ,	
8	762 F.2d 1374 (9th Cir.1985)	20
9	<i>Perrin Bernard Supowitz, LLC v. Morales</i> ,	
10	2023 WL 1415572 (C.D. Cal. Jan. 31, 2023), <i>aff’d</i> , 2024 WL 411714 (9th Cir. Feb. 5, 2024)	11
11	<i>SkinMedica. v. Histogen</i> ,	
12	869 F. Supp. 2d 1176 (S.D. Cal. 2012)	12
13	<i>Solar City Corp. v. Pure Solar Co.</i> ,	
14	2016 WL 11019989 (N.D. Cal. 2016).....	16
15	<i>Turo Inc. v. City of Los Angeles</i> ,	
16	847 F.App’x 442 (9th Cir. 2021).....	17
17	<i>Van Buren v. United States</i> ,	
18	593 U.S. 374 (2021)	17
19	<i>WeRide Corp. v. Kun Huang</i> ,	
20	379 F. Supp. 3d 834 (N.D. Cal. 2019).....	19
21	<i>Whyte v. Schlage Lock Company</i> ,	
22	101 Cal.App.4th 1443 (Div. 3 Cal. 2002)	18
23	<i>Winter v. Natural Res. Def. Council, Inc.</i> ,	
24	555 U.S. 7 (2008)	10
25	<i>Zurich American Ins. v. Bowman</i> ,	
26	2010 WL 5239239 (D. Nevada 2010).....	17
27	STATUTES	
28	18 U.S.C.A. § 1839.....	11
	18 U.S.C. § 1839(3).....	12

Cal. Civ. Code

§ 3426.1	11
§ 3426.1(d).....	12

OTHER AUTHORITIES

Mike DelPrete <i>Portal War '24: Traffic is a Non-Zero Sum Game</i> ; (May 16, 2025), https://www.mikedp.com/articles/2024/5/16/portal-war-24-traffic-is-a-non-zero-sum-game	4
---	---

INTRODUCTION

The Amended Motion for Preliminary Injunction (“Motion”) filed by Move fares no better than its initial motion for such relief. Move abandons its fictional narrative that it will be harmed because CoStar is building a rival news division using Move trade secrets provided by former Move employee Jim Kaminsky. Faced with the threat of Rule 11 sanctions and record evidence undermining that tall tale, Move pivots to an even weaker (equally meritless) theory. According to Move, this Court should now enter the “drastic and extraordinary” remedy of a preliminary injunction against CoStar because: (1) Kaminsky minimally accessed five unsecure documents related to Move’s “News and Insights” business after he was laid off by Move (without using them other than to contact friends and colleagues); and (2) his news division job at Move is the equivalent of his job at CoStar editing descriptions of New York condos and, thus, CoStar should be presumed to also have access to these documents solely because it is his employer. Move further claims that, based on those assertions alone, it will suffer irreparable harm because CoStar will inevitably use those documents to improve its “search engine optimization” (“SEO”) strategy and drive traffic to Homes.com. It makes this claim even though Defendants’ forensic expert confirmed that Kaminsky never had the documents in his CoStar account and they were not sent to anyone at CoStar; Move cannot identify any change CoStar has made to its business or damage it has suffered as a result of Kaminsky’s access to the five Move documents; and CoStar’s Homes.com outperformed Realtor.com for months prior to Kaminsky joining CoStar. The Court should reject Move’s absurd back-up theory and deny its Motion for at least three reasons.

First, Move cannot establish it is likely to succeed on the merits of its claims against CoStar. The un rebutted evidence demonstrates that CoStar does not have, has not received, and has never accessed or used the documents at issue. Those documents do not constitute trade secrets and were not treated by Move as such.

1 They consist primarily of stale descriptions of news stories Move already published.

2 [REDACTED]

3 [REDACTED] And as the head of cyber
4 security at Move's parent, News Corp, testified, [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED] Even if Kaminsky circumvented Move security
8 measures to access these documents (Move admits [REDACTED]), Move could not show
9 he did so on behalf of CoStar or that CoStar knew about such access. Had Move
10 opted to take the expedited discovery it initially requested and then abandoned, it
11 would have confirmed all of this and more. As Kaminsky has been saying since he
12 was first informed of Move's claims against him, he merely accessed the documents
13 at issue (i) in January and February to aid in his job search after Move laid him off,
14 (ii) in March and April to enable him to contact certain former Move colleagues after
15 he started with CoStar, and (iii) briefly between May 31st and June 3rd when he was
16 browsing files in connection with a personal tax issue. More importantly, as both
17 CoStar and Kaminsky have made clear, the expedited discovery Move refused to
18 take would have confirmed that Kaminsky did not provide CoStar *any* of the five
19 documents at issue or any information therein, and that those documents were not
20 used to support CoStar's business. Expedited discovery would also have
21 underscored what Kaminsky told several colleagues at Move, including two
22 managers, months ago: he is not working on, assigning, or editing news, rather, his
23 work involves editing articles regarding New York condos. Instead, Move buried
24 its head in the sand—and refused to take the discovery any legitimate trade secret
25 plaintiff would have taken—because the facts contradicted the case it was
26 publicizing in the media.

27 *Second*, Move cannot demonstrate that it will suffer irreparable harm. Neither
28 CoStar nor Kaminsky used the supposed trade secret documents at issue, as

1 confirmed by forensic experts and the testimony of Kaminsky's co-workers and
2 supervisors, and there is no risk they will do so. This is unsurprising because, again,
3 CoStar does not possess the documents and Kaminsky's job at CoStar has no bearing
4 on the content or SEO strategy on which Move's new motion focuses. This is
5 unsurprising because, again, Kaminsky's job at CoStar has no bearing on the content
6 or SEO strategy on which Move's Motion focuses. Moreover, Kaminsky is on leave
7 until at least the earliest of when this meritless litigation ends or January 1, 2025,
8 making Move news story plans from the first half of 2024 even less relevant than
9 they already were. Underscoring the lack of harm, Move did not treat the perceived
10 "threat" of disclosure with any urgency. Move sat on its hands after discovering
11 Kaminsky still had access to its unsecured documents. It did not contact him. It did
12 not overhaul its security systems. It waited for a month to file suit and six weeks to
13 seek an injunction. And even then, it claimed harm based on a manufactured theory
14 of use on which it refused to take discovery and then abandoned.

15 *Third*, the balance of hardships and the public interest counsel against the
16 entry of an injunction. At a fundamental level, there is nothing to enjoin: neither
17 CoStar nor Kaminsky have used or are using Move's documents. Further, Kaminsky
18 confirmed that his contracts with both Move and CoStar prohibit him from using
19 such documents. An injunction in this case is therefore unnecessary and would only
20 reward Move for filing and publicizing a suit built on falsehoods about CoStar.
21 CoStar would certainly face a hardship based on the inevitable publicity that would
22 accompany an injunction, amplified by Move's continuing PR campaign around this
23 lawsuit (a campaign that has already resulted in Move issuing, and then retracting, a
24 false press statement about this Court's views of the case expressed during the first
25 hearing). On the other hand, Move faces no hardship beyond being denied this
26 unwarranted PR opportunity. Finally, there is no public interest in signaling to
27 companies that they can successfully and publicly enjoin a rival that has hired one
28

1 of its former employees, despite the rival not possessing any of the documents at
2 issue and there being zero evidence of their use.

3 There is no mystery why Move is seeking to enjoin CoStar from using
4 documents it has not used: Move's Realtor.com is losing market share to CoStar's
5 Homes.com. Indeed, as confirmed by Kaminsky's testimony, Move's CEO
6 considers CoStar an "existential threat." Rather than compete on the merits, Move
7 is weaponizing litigation to wage a PR campaign against a rival that is accelerating
8 past Move in the marketplace. That Move's desperate times have given rise to such
9 desperate measures does not warrant injunctive relief. For all of the foregoing
10 reasons, the Court should deny Move's Motion.

11 **BACKGROUND**

12 **A. Move and CoStar**

13 Move operates Realtor.com, the "official website" of the National Association
14 of Realtors, which sells leads to real estate agents. CoStar owns Homes.com, a
15 competing website which sells advertising and on which consumers can shop for a
16 new property. As a result of a recent billion dollar marketing campaign, traffic to
17 Homes.com has vaulted past traffic to Realtor.com.¹ After holding itself out for
18 years as second only to Zillow, Move views the rise of Homes.com as a threat. Thus,
19 Move is waging an all-out media war against CoStar. Indeed, in the months pre-
20 dating this lawsuit, Move's CEO made various public inflammatory statements
21 about CoStar, including that "CoStar is the wolf in sheep's clothing" and that—
22 despite evidence to the contrary—CoStar's recent billion dollar marketing campaign
23 "has been somewhat of a flop." Move has similarly used this lawsuit as part of its
24 effort to undermine CoStar in the press.

25 **B. Move Terminated Kaminsky**

26
27 ¹ Mike DelPrete *Portal War '24: Traffic is a Non-Zero Sum Game*; (May 16, 2025),
28 <https://www.mikedp.com/articles/2024/5/16/portal-war-24-traffic-is-a-non-zero-sum-game> ("Homes.com appears to have solidified its place as the #2 portal in the U.S. market.").

1 In June 2015, Move hired Kaminsky to build a news division for Realtor.com.
2 Kaminsky Dec. ¶ 3. Kaminsky assembled and ran a team that generated news
3 articles with a focus on real estate, and published those articles on Realtor.com's
4 News & Insights page, a free standing site. *Id.* The articles covered topics like
5 celebrity homes, mortgage interest rates, and "how-to" home buyer advice. *Id.* ¶ 5.
6 Kaminsky reported to Move's Vice-President of Communications and was not
7 involved in long-term strategic planning outside of the news division. *Id.* ¶ 4. On
8 January 10, 2024, Move notified Kaminsky that his job was being eliminated, with
9 his last working day on January 12. *Id.* ¶ 6.

10 In those two days, Kaminsky downloaded from his Move computer financial,
11 personal and medical information. *Id.* ¶ 9. These materials included paystubs,
12 performance reviews, medical assessments, and credit card information. *Id.* ¶¶ 9,11.
13 Before returning his laptop, Kaminsky erased the majority of his emails and e-files
14 in an effort to remove personal information. *Id.* ¶ 15. Move had not told Kaminsky
15 he was forbidden from deleting materials on his laptop, and Move has identified no
16 policies prohibiting such conduct. *Id.* ¶ 17; Koutsantonis Dep. at 48:3-25; 49:10-
17 50:13. Kaminsky also understood that any work documents he may have on his
18 computer were saved on Move's servers, should they be needed. Kaminsky Dec. at
19 ¶ 15.

20 C. Kaminsky Applied for a Job at CoStar

21 Because he had not applied for a job in over a decade, Kaminsky had no
22 current resume or LinkedIn profile. Kaminsky Dec. ¶ 19. In order to aid his ability
23 to prepare such documents and his job search, Kaminsky gave himself what he
24 considered to be temporary access, via his Gmail account, to certain documents on
25 Move's Google platform regarding his work there. *Id.* ¶ 20. Many were outdated
26 and many were written or overseen by Kaminsky himself. Kaminsky gave himself
27 such access transparently, by inviting himself to view these documents using the
28 email jim.kaminsky@gmail.com and by emailing a document detailing information

1 about his team members from Move's system to that address.

2 Kaminsky's ability to grant himself access via his personal email and send
3 documents to that account was consistent with Move's practice. Move's Google
4 Docs platform is not kept secure because, in the words of Move's parent's head of
5 cyber security, [REDACTED]

6 [REDACTED] Pence Dep. at 96:24-
7 97:2. Consistent with Move's practice, Kaminsky sent to and/or granted his personal
8 email access to three of the five documents² at issue in the course of updating his
9 resume. Specifically:

- 10 • On January 12, 2024, Kaminsky emailed himself employment summaries for
11 certain of his Move team members so he could compare compensation offers
12 he might receive. Kaminsky Dec. ¶ 25. The documents contained [REDACTED]
13 [REDACTED] Neuberger Dep. 42:25–43:3.
- 14 • On January 23, February 20, and February 26, Kaminsky accessed a May
15 2023 document he jointly prepared entitled "N&I Audience and Revenue for
16 PMDLT" to help him draft his LinkedIn profile and resume.³
- 17 • On January 29, 2024, Kaminsky accessed the "JAN 2023 – 2024 EDITORIAL
18 BUDGET" document in connection with updating his job search materials.
19 This document contains [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 As part of Kaminsky's job search, he responded to CoStar's posting for an
23

24 ² A detailed description of these documents and Kaminsky's motivations for
25 accessing them is in the Declaration of Jim Kaminsky at Paragraphs 82-120. This
testimony rebuts Move's narrative regarding the alleged trade secret nature of these
documents.

26 ³ While Move alleges that Kaminsky downloaded the Audience PowerPoint in
27 January and may have access to it, Kaminsky explained, and Defendants' forensic
28 investigation confirmed, that Kaminsky did not download it and no longer has access
to it. Kaminsky Dec. ¶ 28b. He printed a single page that detailed certain of his
accomplishments from 2022 to support his efforts to build his resume. *Id.* He
decided not to use the metrics on that page and threw it away long ago. *Id.*

1 “Editor, Residential Real Estate – Condos” position. Noe Dec. ¶ 4. After
2 interviewing him, CoStar hired Kaminsky in March. CoStar did not solicit
3 Kaminsky, or hire him for a role related to news, content strategy, or SEO. Rather,
4 Kaminsky was hired to manage a small team of writers generating descriptions of
5 New York condos. Noe Dec. ¶ 5. Kaminsky did not reveal any confidential Move
6 information to CoStar during his interviews, nor did CoStar solicit such information.
7 Kaminsky Dec. ¶ 33. Move’s CMO confirmed that [REDACTED]
8 [REDACTED] Neuberger Dep. 78:7-8.

9 **D. Kaminsky’s Role at CoStar is Unrelated to his Work at Move**

10 Kaminsky joined CoStar on March 11 and signed Terms and Conditions
11 mandating he not disclose to CoStar or use for its benefit “any trade secret or
12 confidential information [he] may possess.” Corelli Dec., Ex. 2. Consistent with
13 CoStar’s intent when it hired him, Kaminsky’s job at CoStar is limited to writing
14 about history, architectural detail, and lifestyle within New York City condos. Noe
15 Dec. ¶ 5; Kaminsky Dec. ¶ 40. CoStar decided to develop this content and built the
16 team in 2023; Kaminsky had no role in selecting this content, hiring his team, or
17 setting their compensation. Noe Dec. ¶ 16. Moreover, CoStar has a news division
18 separate from Kaminsky’s team, with which Kaminsky does not work. *Id.* at ¶¶ 19-
19 20. Kaminsky has also not worked—nor talked to or shared information—with
20 CoStar’s SEO department, which focuses on driving traffic to Homes.com. *Id.*
21 Kaminsky confirmed through testimony that his job at CoStar is not news- or
22 Internet-traffic based, and to his knowledge he has not even seen statistics about
23 traffic to Homes.com, and does not focus on such traffic. *Id.* at ¶ 40. Kaminsky has
24 no strategic role or input at CoStar beyond the New York condo content he oversees.
25 *Id.* at ¶¶ 19-20. Move knew of Kaminsky’s narrow role at CoStar before initially
26 suing, because Kaminsky readily disclosed this information to Move managers and
27 employees after joining CoStar. *See* Kaminsky Dec. ¶ 46.

28 **E. Kaminsky did not use Move’s Information at CoStar**

1 From the time Kaminsky began working at CoStar on March 11 until May 30,
2 Kaminsky accessed only one Move internal document: a staff contact list.
3 Kaminsky developed this list while at Move and accessed it after his employment to
4 facilitate social contact with former colleagues. Kaminsky Dec. ¶ 48. Then, on May
5 31, Kaminsky was working to resolve a tax issue. In doing so, he viewed Move
6 documents he emailed himself before leaving Move. *Id.* ¶ 51. While doing this, he
7 learned that Move had not deactivated the Google links he had given himself access
8 to in January. At this time and out of sheer curiosity, he accessed 33 of the
9 documents located at those links in rapid succession (30 of which Move does not
10 allege are trade secrets in its Motion). Specifically:

- 11 • Kaminsky accessed for a few minutes the Audience PowerPoint once more to
12 see what it was.
- 13 • Kaminsky briefly accessed a presentation entitled “N&I/News Corp
14 Partnerships and Amplifications for Growth” which he prepared and
15 presented [REDACTED]. He accessed this document in a span of 25 minutes in
16 which he also accessed 16 other documents.
- 17 • Kaminsky briefly accessed the “Comms + Econ + N&I Project Call”
18 document, which is an [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED].⁴ Kaminsky Dec. ¶¶ 51, 53(c).

22 None of these documents were relevant to Kaminsky’s work at CoStar and he
23 did not attempt to identify or learn anything from those documents to support such
24 work. Kaminsky Dec. ¶ 51. More importantly, Kaminsky never used any of the
25 documents (or information in them) to support his work at CoStar or shared them
26 with anyone at CoStar. *Id.* ¶ 56. In fact, no one at CoStar even knew Kaminsky had
27

28 ⁴ Kaminsky accessed this document again on June 3 based merely on curiosity.

1 access to or had accessed these documents. Kaminsky Dec. ¶ 51. Move does not
2 argue otherwise.

3 **F. Move Did Not Take Prompt Action**

4 Move learned on June 3, 2024 that Kaminsky accessed its purported trade
5 secrets. Mot. at 7; [REDACTED]

6 [REDACTED] But Move took no immediate action. It didn't contact Kaminsky. It didn't
7 seek emergency relief in court. [REDACTED]

8 [REDACTED]
9 [REDACTED]
10 [REDACTED] Move sued Kaminsky and CoStar alleging they used its trade
11 secrets to build a news business to rival Move's. (Dkt. 1, ¶¶ 24, 31.) Move had no
12 basis for these allegations.

13 Even at that time, Move did not seek an injunction. Six weeks passed before
14 it sought one on July 15. (Dkt. 12.). Although Move (ironically) faults CoStar for
15 defending against these false allegations in the media, CoStar had no choice but to
16 publicly declare that that it did not use Move's documents, and that Move's
17 allegations had no basis (a statement confirmed through Move's own amendment).
18 Outside of the media, CoStar sent Move a Rule 11 letter indicating that CoStar would
19 seek sanctions as a result of Move's false allegations, and sought expedited
20 discovery to demonstrate that there was no basis for Move's fantastical theory.

21 Pinned back, Move changed tactics. First, despite requesting such discovery
22 in its initial Motion, Move opposed CoStar's request for expedited discovery. Then,
23 after the Court granted CoStar's request, Move refused to seek *any* discovery. No
24 wonder: It would be counterproductive to obtain yet more facts belying its
25 conspiracy theory. Then, underscoring that Move had no basis for its claims all
26 along, Move backtracked by filing an amended complaint on August 16, followed
27 by the amended Motion on August 28. Those filings no longer allege that
28 Defendants are using its trade secrets and abandon the story that CoStar and

1 Kaminsky are developing a rival news division. Instead, Move concocts an even
2 weaker theory, speculating that *perhaps* stale documents about its news articles and
3 their viewership, which CoStar does not possess, *might* in the future *somehow* help
4 CoStar’s already successful SEO division (which sworn testimony shows Kaminsky
5 has no ties to), despite that the only record evidence demonstrates otherwise.

6 **G. CoStar’s Remedial Actions**

7 Although there is no evidence that it possesses, used, or might use any of the
8 alleged trade secrets underlying Move’s motion, CoStar took remedial actions to
9 negate any possibility of harm—let alone imminent harm—to Move, including by
10 sending out legal holds, preserving data, and placing Kaminsky on leave. CoStar
11 did so even though Kaminsky’s role at CoStar has nothing to do with his position at
12 Move and there is zero evidence, nor could there be, that Kaminsky has any
13 involvement in news or SEO strategy, or that any Move documents have been shared
14 with anyone at CoStar. CoStar has also obtained, at its own expense, a forensic firm
15 to conduct an investigation. This firm confirmed what CoStar has said all along:
16 Kaminsky did not have any of the Move documents at issue on his systems at CoStar,
17 and did not provide them to anyone at CoStar. Negangard Dec. ¶¶ 9-13.

18 **LEGAL STANDARD**

19 A preliminary injunction is a “drastic and extraordinary remedy that is not to
20 be routinely granted.” *Nat’l Steel Car, Ltd. v. Canadian Pac. R.R., Ltd.*, 357 F.3d
21 1319, 1324 (Fed. Cir. 2004). Plaintiffs can obtain a preliminary injunction if they
22 establish four factors: (1) likeliness to succeed on the merits, (2) likeliness to suffer
23 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips
24 in their favor, and (4) an injunction is in the public interest. *Winter v. Natural Res.*
25 *Def. Council, Inc.*, 555 U.S. 7, 20–22 (2008). All four of the *Winter* factors must be
26 met to obtain a preliminary injunction. *Alliance for the Wild Rockies v. Pena* 865
27 F.3d 1211, 1223 (9th Cir. 2017). A failure to establish any is fatal and must result
28 in denial. *Id.* Move has the burden of demonstrating these factors with a “clear

showing” of “evidence,” which “requires factual support beyond the allegations of the complaint.” *Concord Music Group, Inc. v. STAX PTY.*, 2023 WL 2977495, at *2 (C.D. Cal. 2023).

ARGUMENT

A. Move is Unlikely to Succeed on the Merits

Move cannot prove its claims against CoStar are likely to succeed on the merits. Move asserts two sets of such claims: (1) trade secret misappropriation claims under the federal Defend Trade Secrets Act (“DTSA”) and California Uniform Trade Secrets Act (“CUTSA”), and (2) a claim under the Computer Fraud and Abuse Act (“CFAA”). As likelihood of success is a threshold issue, Move’s motion can and should be denied on this ground alone. *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

1. Move Cannot Establish Trade Secret Misappropriation

a. *The Documents at Issue are not Trade Secrets*

The DTSA and CUTSA mirror one another and are analyzed together. *Perrin Bernard Supowitz, LLC v. Morales*, 2023 WL 1415572, at *5 (C.D. Cal. Jan. 31, 2023), *aff’d*, 2024 WL 411714 (9th Cir. Feb. 5, 2024); 18 U.S.C.A. § 1839; Cal. Civ. Code § 3426.1. Move cannot prevail under either. First, Move must show that the documents at issue are trade secrets. *Agency Sols. Com, LLC v. TriZetto Grp.*, 819 F. Supp. 2d 1001, 1015 (E.D. Cal. 2011). As Kaminsky details in his declaration, the content at issue is largely stale “publication schedules” and “information” about “popular content” for the Realtor.com website, Mot. at 12, all of which is publicly available or readily ascertainable at this juncture. These materials are not “formulas” for Move’s “success.” Mot. at 15. They are from 2023 and the first half of 2024 and contain no article ideas beyond August 2024. *Cf. Perrin Bernard Supowitz, LLC v. Morales*, 2023 WL 1415572, at *13-14 (C.D. Cal. Jan. 31, 2023) (declining to enjoin employees from using outdated information). The only other category of information—relating to Move’s employee titles and compensation—is available on

1 LinkedIn and websites like Glassdoor. Move has not established how any alleged
2 trade secret is “sufficiently valuable and secret to afford an actual or potential
3 economic advantage over others.” *See Genasys Inc. v. Vector Acoustics*, 2022 WL
4 16577872, at *9 (S.D. Cal. Nov. 1, 2022).⁵

5 b. ***Move Did not Protect its Alleged Trade Secrets***

6 Not only are the documents underlying Move’s motion not trade secrets, they
7 were not protected by Move as such. “Axiomatically, a trade secret must be a secret
8 to merit legal protection.” *SkinMedica. v. Histogen*, 869 F. Supp. 2d 1176, 1193
9 (S.D. Cal. 2012); Cal. Civ. Code § 3426.1(d) (“trade secret” must be the “subject of
10 efforts that are reasonable under the circumstances to maintain its secrecy”); *accord*
11 18 U.S.C. § 1839(3). The 30(b)(6) testimony of Howard Pence, the Vice President
12 of Global Cyber Defense at Move’s parent company, News Corp, establishes that
13 the documents at issue were far from “secret.” For example, as confirmed by Move’s
14 testimony and CoStar’s forensic expert:

15 •

25 ⁵ Move’s cases involve information defined with much greater specificity and which
26 was not partially available in published form. *Beluca Ventures LLC v. Einride*
27 *Aktiebolag*, 660 F. Supp. 3d 898, 908-909 (N.D. Cal. 2003) (“elements of technology
28 stack that gave [company] a competitive advantage”); *Chartwell Staffing Servs. v.*
Atlantic Solutions Grp., 2019 WL 2177262, at *6 (C.D. Cal. May 20, 2019)
 (“detailed compilation of all Chartwell’s customers, combined with specific
 information” about customer preferences).

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 ⁶ [REDACTED]
27 [REDACTED]

28 ⁷ Exs. A & B to Holbert Dec., Dkt. 59-1h; Ex. A to Gruenberg Dec., Dkt. 59-3; Ex. A to Neuberger Dec., Dkt. 59-5; Ex. A to Zimbert Dec., Dkt. 59-6.

1 [REDACTED]
2 The above practices are contrary to industry standards for protecting trade
3 secrets, Oza Dec. ¶¶ 18-23, 30-46, and are inconsistent with “reasonable efforts to
4 maintain secrecy.” *See In re Ingle Co.*, 116 F.3d 1485 (9th Cir. 1997) (considering
5 factors including creating limited access databases and limiting access to the
6 information to key personnel); *In re Providian Credit Card Cases*, 96 Cal. App. 4th
7 292, 304 (2002) (“[A]mong the factors repeatedly noted are restricting access and
8 physical segregation of the information”).

9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED] *see Harvest*
13 *Small Bus. Fin. V. Mitnick*, 2024 WL 694372, at *2, *7 (C.D. Cal. Jan. 23, 2024)
14 (plaintiff did not protect information despite *existence of* “two password and user
15 ID-protected systems, limiting employees’ access to [the] data, encrypting the data,
16 requiring two-factor authentication to access the data, and separately storing the data
17 on its own server that is password protected and limited”). Nor can Move justify its
18 failure to secure its Google platform, by citing its “confidentiality agreements”
19 which vaguely designate as confidential [REDACTED]
20 [REDACTED] *See* Ex. A to Konstantounis Dec., Dkt. 59-4, at
21 8. These “vague descriptions of exactly what it is that constitutes a trade secret
22 renders the confidentiality agreement largely meaningless.” *Mattel v. MGA Enter.,*
23 *Inc.*, 782 F. Supp. 2d 911, 959-60 (C.D. Cal. 2011).

24 Move’s decision to allow [REDACTED] to its supposed trade secret
25 documents, *see generally* Oza Dec., demonstrates that it cannot succeed on the
26 merits of its trade secret claims. *Gemisys Corp. v. Phoenix Am., Inc.*, 186 F.R.D.
27 551, 559 (N.D. Cal.1999).

28 c. ***Defendants have not used Move Trade Secrets***

1 Even if all of the information Kaminsky accessed was Move trade secret
2 information (it was not), CoStar does not possess and has not used *any* of the
3 information at issue. Move’s CMO admitted [REDACTED]
4 [REDACTED] Neuberger Dep. 52:22-24, 53:3-4, 66:9-10, 76:7-
5 8, 77:12-13. Kaminsky’s CoStar supervisors and colleagues testified that they have
6 not asked for or received from Kaminsky any Move confidential information. *See*
7 Madlener Dec.; Snider Dec.; Goldenda Dec.; Hendrickson Dec., O’Connor Dec.;
8 Rosenberg Dec.; Dobija-Nootens Dec.; Wilson Dec.; Noe Dec.; Davis Dec.
9 Kaminsky similarly confirmed as much. Finally, a forensic firm engaged by
10 Defendants searched for the file names and hash values of the five documents at
11 issue in Kaminsky’s personal and CoStar devices and accounts and confirmed they
12 are not there (other than employee summaries which Kaminsky confirmed he has
13 not used or accessed since leaving Move). *See* Negangard Dec. ¶¶ 9-13. And
14 Move’s 30(b)(6) designee admitted that [REDACTED]
15 [REDACTED] Neuberger
16 Dep. 55:8-12. Such failure to prove that any of the documents or information at
17 issue was shared with or used by CoStar is fatal to Move’s Motion. *See*
18 *AssuredPartners of Oregon, LLC v. Reese*, 2022 WL 2188191, at *5-6 (D. Oregon
19 2022) (denying PI where former employee accessed confidential information after
20 departure, but did not share information at new company).

21 **d. *Respondeat Superior Does not Apply***

22 In order to sidestep the fact that it has no evidence of CoStar accessing or
23 using the documents at issue, Move argues that CoStar is “vicariously liable” for
24 Kaminsky’s “misappropriation” of those five documents under *respondeat superior*.
25 Mot. at 21. Not so. Move’s theory hinges on Kaminsky’s employment
26 encompassing SEO or content strategy, but—as noted above, the scope of his
27 employment covers neither and, in any event, Kaminsky was not acting in the “scope
28

1 of his employment” when he accessed the five documents at issue. Move’s
2 conjecture is contradicted by the only evidence before the court.

3 The record shows CoStar did not ask Kaminsky to provide it with any Move
4 documents and CoStar had no knowledge that Kaminsky had such access until Move
5 filed this lawsuit. Indeed, by Move’s own admission, all of these documents were
6 downloaded or accessed before he began working at CoStar, and only three were
7 accessed after that point—and only for *seconds or minutes*. See *Alert Enter., Inc. v.*
8 *Rana*, 2023 WL 2541353, at *3 (N.D. Cal. 2023) (“How can a person be acting
9 within the scope of his employment with an entity for whom he is not yet
10 employed?”).

11 To the extent Move argues that CoStar should be vicariously liable because
12 (unknown to CoStar) Kaminsky accessed three documents in his free time after
13 completing his work for CoStar, no law or facts support that conclusion. Move’s
14 cases are readily distinguishable. In *Cisco*, a defendant received a competitor’s trade
15 secret information directly benefiting his employment. *Cisco Systems, Inc. v.*
16 *Chung*, 462 F. Supp. 3d 1024, 1034 (N.D. Cal. 2020). Here, the documents at issue
17 have no relevance to Kaminsky’s CoStar job. Move’s other cases are no more
18 relevant, and none stand for the proposition that allegations of *respondeat superior*
19 can stand in the face of un rebutted evidence. See *Solar City Corp. v. Pure Solar Co.*,
20 2016 WL 11019989, at *5 (N.D. Cal. 2016) (defendant’s employee acting within
21 scope of employment when he used plaintiff’s confidential information to provide
22 leads for defendant-company); *Language Line Servs., Inc. v. Language Servs.*
23 *Associates, Inc.*, 944 F. Supp. 2d 775, 778, 783 (N.D. Cal. 2013) (employer could
24 be liable under *respondeat superior* where employee was circulating leads taken
25 from prior employer); *Galderma Labs., L.P. v. Revance Therapeutics, Inc.*, 2024
26 WL 3008860, at *4 (C.D. Cal. 2024) (employer could be liable when defendant’s
27 employee disclosed trade secrets at sales meeting).

28

1 Given the undisputed facts, there is no likelihood Move could succeed on its
2 theory of vicarious liability. *Galderma Lab's*, 2024 WL 3008860, at *4
3 (“Ordinarily, the determination whether an employee has acted within the scope of
4 employment presents a question of fact; it becomes a question of law, however, when
5 the facts are undisputed and no conflicting inferences are possible.”).⁸

6 **2. Move is Unlikely to Succeed on its CFAA Claim**

7 Move’s CFAA claim involves the narrow issue of Kaminsky’s post-
8 employment access to Move’s Google Drive. Mot. at 17–18. But Move, by its own
9 admission, has removed Kaminsky’s access to Move’s alleged “protected
10 computer.” Am. Compl. ¶ 40. And Move has never claimed CoStar independently
11 accessed any protected computer. There is no basis for the entry of injunctive relief
12 under the CFAA against CoStar. *See Van Buren v. United States*, 593 U.S. 374, 382-
13 83 (2021); *accord Zurich American Ins. v. Bowman*, 2010 WL 5239239 at *2 (D.
14 Nevada 2010) (CFAA claim “does not warrant injunctive relief” because “claim
15 only addresses conduct that has allegedly occurred in the past”); *hiQ Labs, Inc. v.*
16 *LinkedIn Corp.*, 31 F.4th 1180 (9th Cir. 2022) (“CFAA is best understood as an anti-
17 intrusion statute and not as a ‘misappropriation statute.’”). Moreover, Move is not
18 likely to succeed on the claim because Move does not make the required allegation
19 of “technological harm.” *See hiQ Labs*, 31 F.4th 1180 at 1195.

20 **B. Move Faces No Imminent or Irreparable Harm**

21 “Irreparable harm is arguably the single most important prerequisite for the
22 issuance of a preliminary injunction.” *KCG Americas LLC v. Zhengquan Zhang*,
23 2017 WL 8294011, at *2 (N.D. Cal. Apr. 10, 2017). The failure to show such harm
24 dooms Move’s Motion. *Turo Inc. v. City of Los Angeles*, 847 F.App’x 442, 444 (9th
25 Cir. 2021).

26 **1. Move’s Allegations of Harm are Speculative**

27
28 ⁸ Move’s allegation that CoStar ratified Kaminsky’s alleged conduct is also baseless.
CoStar has not “fail[ed] to investigate or respond to the charges.” Mot. at 15–16.

1 Harm is not irreparable unless it is actual and imminent, not remote or
2 speculative. *Dotster, Inc. v. ICANN*, 296 F. Supp. 2d 1159, 1162 (C.D. Cal. 2003).
3 A movant must adduce evidence of such harm and may not rely on “unsupported
4 and conclusory statements regarding harm [the plaintiff] might suffer.” *Herb Reed*
5 *Enterprises*, 736 F.3d at 1250.

6 Move’s theory of harm is premised on the long-rejected doctrine of
7 “inevitable disclosure.” Move claims that Defendants “could use or disclose the
8 confidential materials...at any time” because Kaminsky knows the information and
9 can supposedly use it at CoStar. Mot. at 19. As a legal matter, California courts and
10 courts in this Circuit “complete[ly]” “reject” this theory. *Whyte v. Schlage Lock*
11 *Company*, 101 Cal.App.4th 1443, 1463 (Div. 3 Cal. 2002); *Lam Res. Corp. v.*
12 *Deshmukh*, 157 F. App’x 26, 28 (9th Cir. 2005) (“[B]ecause California does not
13 recognize the inevitable disclosure doctrine, the preliminary injunction...must be
14 vacated.”).

15 As a factual matter, this theory fails given Kaminsky’s role at CoStar. Move’s
16 new angle is that Kaminsky could impact CoStar’s approach to “content” and “SEO”
17 as a result of the Move documents he briefly accessed. This is rank speculation—
18 there is zero evidence CoStar is using or would use any information Kaminsky
19 viewed to change CoStar’s content or improve its SEO. Indeed, Kaminsky has no
20 role relating to content or SEO strategy at CoStar. CoStar’s head of SEO further
21 confirmed that he did not even know who Kaminsky was and his team have not seen
22 (or used) any information allegedly taken from Move. Kuwahara Dec. ¶¶ 5-6.
23 Move’s 30(b)(6) designee regarding its allegations of harm also testified [REDACTED]

24 [REDACTED]
25 [REDACTED] Neuberger Dep. 107:3-7.⁹

26 _____
27 ⁹ Move’s claims it suffered irreparable harm because Kaminsky deleted certain files
28 makes no sense; his deletion has nothing to do with the purported misappropriation
and all of the deleted Move files were and are available on Move’s server.
Kaminsky Dec. ¶¶ 15, 131.

1 Move's cases underscore its failure to establish irreparable harm here. For
2 example, in *Edwards*, the Court found a threat of such harm because the defendant
3 took documents specifically to use them in his job at a rival company, and
4 misrepresented that the trade secrets had been deleted. 2023 WL 4680774 at *5. In
5 *WeRide Corp. v. Kun Huang*, plaintiff presented direct evidence of defendant *using*
6 the alleged trade secrets. *See* 379 F. Supp. 3d 834, 844 (N.D. Cal. 2019). And in
7 *Henry Schein, Inc. v. Cook*, the Court found irreparable harm based on the
8 Defendants' recruiting actions using the trade secrets. 191 F. Supp. 3d 1072, 1075
9 (N.D. Cal. 2016). The un rebutted record shows that CoStar has never used Move's
10 documents, nor even possessed them. Move's assertion that CoStar has "access" to
11 its materials and *may* use them is counter-factual speculation that fails to establish
12 irreparable harm. *Calence, LLC v. Dimension Data Holdings, PLC*, 222 F. App'x
13 563, 566 (9th Cir. 2007) (courts need not "presume irreparable harm because of
14 alleged trade secret loss").¹⁰

15 2. CoStar's Actions Negated Any Potential for Harm

16 In light of CoStar's voluntary remedial actions, Move cannot show that it
17 imminently faces any harm, let alone irreparable harm. *Monster Energy Co. v.*
18 *Integrated Supply Network, LLC*, 2021 WL 2986355, at *3 (C.D. Cal. Mar. 10, 2021)
19 (defendant's remedial actions were "sufficient for the Court to find that Plaintiff is
20 no longer at risk of irreparable harm"). Since learning of Move's allegations, CoStar
21 preserved all relevant information, reminded Kaminsky and employees working
22 with him that they are not to use Move information, engaged a forensic expert, and
23 placed Kaminsky on leave. These remediation efforts negate any likelihood that

24
25 ¹⁰ Move also focuses on statements from CoStar's general counsel and CEO, arguing
26 that CoStar's leadership "boasted it has no intention of policing Kaminsky's conduct
27 and sees nothing wrong with it." Mot. at 20. This is a mischaracterization of those
28 statements and a baseless attempt at misdirection. CoStar investigated and
confirmed it does not have and has not used the documents underlying Move's
motion. The statements reflect Move's false assertions of use, and the overall
weakness of Move's case. Expedited discovery has only confirmed the baselessness
of Move's claims about CoStar.

1 Move will suffer irreparable harm. *Monster Energy*, 2021 WL 2986355 at *3
2 (defendant’s remedial actions were “sufficient for the Court to find that Plaintiff is
3 no longer at risk of irreparable harm”).

4 **3. Move’s Delay Undermines Immediate Harm**

5 Plaintiff’s delay in seeking return of its trade secrets, in filing a complaint,
6 and in seeking injunctive relief further undercuts any claim of immediate irreparable
7 harm. *Oakland Tribune, Inc. v. Chronicle Pub. Co.*, 762 F.2d 1374, 1377 (9th
8 Cir.1985); *Lydo Enters. v. City of Las Vegas*, 745 F.2d 1211, 1213-14 (9th Cir.1984)
9 (“delay in seeking a preliminary injunction is a factor to be considered”). Move not
10 only delayed, it did not act as if it had any significant concern that its trade secrets
11 were compromised, and instead declined to take remedial measures. Pence Dep.
12 81:21–82:3 (“other than removing [Kaminsky’s] access,” Move took *no steps to*
13 *mitigate* the alleged breach). Instead, Move continues [REDACTED]

14 [REDACTED]

15 [REDACTED] Pence Dep. 150:10–19. [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED] *id.* 81:21–82:23; *see* Oza Dec. ¶¶ 8, 18-23, 30-46.

19 **4. Move’s Alleged Economic Losses are Reparable**

20 As a matter of law, the type of harm Move alleges—loss of market position
21 and (unidentified) customers—is not irreparable. Even if Move could establish that
22 CoStar used its trade secrets, such harm is compensable by money damages. *See*
23 *Kimbell v. Republic of Austria*, 2017 WL 10573983, at *2 (C.D. Cal. July 7, 2017)
24 (“Economic losses do not constitute “irreparable harm” because monetary damages
25 can be recovered following success on the merits.”); *Calence, LLC v. Dimension*
26 *Data Holdings, PLC*, 222 F. App’x 563, 566 (9th Cir. 2007) (affirming denial of PI
27 where “allegedly lost revenues ... can be remedied through money damages”).

28 **C. The Balance of Hardships Weighs Against the Grant of Move’s Motion,**

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant CoStar Group, Inc., certifies that this brief contains 6,981 words, which complies with the word limit of L.R. 11-6.1.

Dated: September 4, 2024 By: /s/ Matthew W. Walch
Matthew W. Walch